

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**R.R. STREET & CO. INC. and
NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH, PA, as
subrogee of R.R. Street & Co. Inc.
Plaintiffs,**

V.

**VULCAN MATERIALS COMPANY, n/k/a
LEGACY VULCAN CORP.,
Defendant.**

§ § § § § § § § § §

Case No. 1:08-CV-01182
Judge: Hon. Virginia M. Kendall
(Jury Requested)

**NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA'S
MOTION FOR LEAVE TO FILE SUR-REPLY IN RESPONSE TO LEGACY VULCAN
CORP'S REPLY IN SUPPORT OF ITS MOTION TO DISMISS OR, IN THE
ALTERNATIVE, STAY PLAINTIFFS' AMENDED COMPLAINT**

Plaintiff, National Union Fire Insurance Company of Pittsburgh, PA (“National Union”), hereby moves this Court for leave to file a Sur-Reply in Response to Legacy Vulcan Corp.’s Reply in Support of Its Motion to Dismiss or, in the Alternative, Stay Plaintiffs’ Amended Complaint (“Reply”) (Docket No. 32). The proposed Sur-Reply is submitted to address new issues raised by Legacy Vulcan Corp. (“Vulcan”) in its Reply. In support hereof, National Union will show as follows:

Vulcan filed its Motion to Dismiss on May 12, 2008 (Docket No. 22). National Union filed its Response to Vulcan’s Motion to Dismiss on June 6, 2008 (“Response”) (Docket No. 30). Vulcan then filed its Reply in Support of Its Motion to Dismiss or, in the Alternative, Stay on June 27, 2008 (Docket No. 32). Pursuant to the Court’s Order dated May 20, 2008, the decision date for Vulcan’s Motion to Dismiss is July 31, 2008.

 $\{$

In its Reply, Vulcan raises issues that were not raised in its Motion to Dismiss. Specifically, there have been developments in the two cases in California upon which Vulcan relies that are discussed in Vulcan's Reply, that occurred *after* National Union filed its Response. Additionally, since National Union filed its Response, the Seventh Circuit has issued an opinion that is relevant to the legal issues raised by the Motion to Dismiss. National Union respectfully requests leave to file its Sur-Reply (attached hereto as Exhibit 1) so that it may respond to these newly raised arguments.

WHEREFORE, National Union prays that the Court grant this Motion for Leave, and for any such further relief it deems just and proper.

Dated this 11th day of July 2008. Respectfully Submitted,

BOLLINGER, RUBERRY & GARVEY

By: /s/ Bryan G. Schumann /s/
Bryan G. Schumann
Federal Admission ID No. 6190102
500 West Madison Street, Suite 2300
Chicago, Illinois 60661-2511
Tel: (312) 466-8000
Fax: (312) 466-8001

**ATTORNEYS FOR PLAINTIFF,
NATIONAL UNION FIRE INSURANCE COMPANY
OF PITTSBURGH, PA**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument was served upon all parties, by and through their counsel of record, electronically via the U.S. District Court's ECF system on this **14th** day of **July, 2008**.

_____/s/ Bryan G. Schumann /s/

Bryan G. Schumann
Federal Admission ID No. 6190102
BOLLINGER, RUBERRY & GARVEY
500 West Madison Street, Suite 2300
Chicago, Illinois 60661-2511
Tel: (312) 466-8000
Fax: (312) 466-8001

**ATTORNEYS FOR PLAINTIFF,
NATIONAL UNION FIRE INSURANCE COMPANY
OF PITTSBURGH, PA**